

Senate File 2353 - Reprinted

SENATE FILE _____
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3161)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the appointment of certain judicial officers,
2 the retirement of senior judges, and the entry of temporary
3 custody and visitation orders.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 5465SV 82
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1 1 Section 1. Section 46.12, Code 2007, is amended to read as
1 2 follows:

1 3 46.12 NOTIFICATION OF VACANCY AND RESIGNATION.

1 4 1. a. When a vacancy occurs or will occur within one
1 5 hundred twenty days in the supreme court, the court of
1 6 appeals, or district court, the state commissioner of
1 7 elections shall ~~forthwith so~~ immediately notify the
1 8 chairperson of the proper judicial nominating commission. The
1 9 chairperson shall call a meeting of the commission within ten
1 10 days after such notice; if the chairperson fails to do so, the
1 11 chief justice shall call such meeting.

1 12 b. When a judge of the supreme court, court of appeals, or
1 13 district court resigns, the judge shall submit a copy of the
1 14 resignation to the state commissioner of elections at the time
1 15 the judge submits the resignation to the governor; and when a
1 16 judge of the supreme court, court of appeals, or district
1 17 court dies, the clerk of district court of the county of the
1 18 judge's residence shall in writing ~~forthwith~~ immediately
1 19 notify the state commissioner of elections of such fact.

1 20 2. a. When a vacancy occurs or will occur within one
1 21 hundred twenty days in the office of a district associate
1 22 judge, associate juvenile judge, or associate probate judge,
1 23 the state commissioner of elections shall immediately notify
1 24 the chairperson of the judicial district nominating
1 25 commission. The chairperson shall call a meeting of the
1 26 commission within ten days after such notice; if the
1 27 chairperson fails to do so, the chief judge of the judicial
1 28 district shall call such meeting.

1 29 b. When a district associate judge, associate juvenile
1 30 judge, or associate probate judge resigns, the judge shall
1 31 submit the resignation to the chief judge and shall submit a
1 32 copy of the resignation to the state court administrator who
1 33 shall notify the state commissioner of elections of the
1 34 resignation and the actual or impending vacancy. When a
1 35 district associate judge, associate juvenile judge, or
2 1 associate probate judge dies, the clerk of the district court
2 2 of the county of the judge's residence shall in writing
2 3 immediately notify the chief judge of the judicial district
2 4 and the state court administrator of such fact. The state
2 5 court administrator shall notify the state commissioner of
2 6 elections of the vacancy in the office.

2 7 Sec. 2. Section 46.14, Code 2007, is amended to read as
2 8 follows:

2 9 46.14 NOMINATION.

2 10 1. SUPREME COURT, COURT OF APPEALS, AND DISTRICT JUDGES.

2 11 Each judicial nominating commission shall carefully consider
2 12 the individuals available for judge, and within sixty days
2 13 after receiving notice of a vacancy shall certify to the
2 14 governor and the chief justice the proper number of nominees,
2 15 in alphabetical order. Such nominees shall be chosen by the
2 16 affirmative vote of a majority of the full statutory number of
2 17 commissioners upon the basis of their qualifications and

2 18 without regard to political affiliation. Nominees shall be
2 19 members of the bar of Iowa, shall be residents of the state ~~or~~
2 20 ~~district of the court to which they are nominated~~, and shall
2 21 be of such age that they will be able to serve an initial and
2 22 one regular term of office to which they are nominated before
2 23 reaching the age of seventy-two years. Nominees for district
2 24 judge shall file a certified application form, to be provided
2 25 by the supreme court, with the chairperson of the district
2 26 judicial nominating commission. Absence of a commissioner or
2 27 vacancy upon the commission shall not invalidate a nomination.
2 28 The chairperson of the commission shall promptly certify the
2 29 names of the nominees, in alphabetical order, to the governor
2 30 and the chief justice.

2 31 2. OFFICE OF DISTRICT ASSOCIATE JUDGE, ASSOCIATE JUVENILE
2 32 JUDGE, AND ASSOCIATE PROBATE JUDGE. The judicial district
2 33 nominating commission shall carefully consider the individuals
2 34 available for judge, and within sixty days after receiving
2 35 notice of a vacancy shall certify, as provided in section
3 1 602.6304, 602.7103B, or 633.20B, whichever is applicable, to
3 2 the longest serving district judge in the judicial election
3 3 district the proper number of nominees, in alphabetical order.
3 4 Such nominees shall be chosen by the affirmative vote of a
3 5 majority of the full statutory number of commissioners upon
3 6 the basis of their qualifications and without regard to
3 7 political affiliation. Nominees shall be members of the bar
3 8 of Iowa, and shall be of such age that they will be able to
3 9 serve an initial and one regular term of office to which they
3 10 are nominated before reaching the age of seventy-two years.

3 11 2. 3. COMMISSIONER ELIGIBILITY AND VOTING. A
3 12 commissioner shall not be eligible for nomination by the
3 13 commission during the term for which the commissioner was
3 14 elected or appointed to that commission. A commissioner shall
3 15 not be eligible to vote for the nomination of a family member,
3 16 current law partner, or current business partner. For
3 17 purposes of this subsection, "family member" means a spouse,
3 18 son, daughter, brother, sister, uncle, aunt, first cousin,
3 19 nephew, niece, father-in-law, mother-in-law, son-in-law,
3 20 daughter-in-law, brother-in-law, sister-in-law, father,
3 21 mother, stepfather, stepmother, stepson, stepdaughter,
3 22 stepbrother, stepsister, half brother, or half sister.

3 23 Sec. 3. Section 236.4, subsection 2, Code 2007, is amended
3 24 to read as follows:

3 25 2. The court may enter any temporary order it deems
3 26 necessary to protect the plaintiff from domestic abuse prior
3 27 to the hearing, including temporary custody or visitation
3 28 orders pursuant to subsection 2A, upon good cause shown in an
3 29 ex parte proceeding. Present danger of domestic abuse to the
3 30 plaintiff constitutes good cause for purposes of this
3 31 subsection.

3 32 Sec. 4. Section 236.4, Code 2007, is amended by adding the
3 33 following new subsection:

3 34 NEW SUBSECTION. 2A. The court may award temporary custody
3 35 of or establish temporary visitation rights with regard to
4 1 children under eighteen years of age. In awarding temporary
4 2 custody or temporary visitation rights, the court shall give
4 3 primary consideration to the safety of the alleged victim and
4 4 the children. Prior to the entry of any temporary order
4 5 pursuant to this subsection related to a child-custody
4 6 determination as defined in section 598B.102, the plaintiff
4 7 shall comply with the provisions of section 598B.209. If the
4 8 court finds that the safety of the alleged victim will be
4 9 jeopardized by unsupervised or unrestricted visitation, the
4 10 court shall set conditions or restrict visitation as to time,
4 11 place, duration, or supervision, or deny visitation entirely,
4 12 as needed to guard the safety of the victim and the children.
4 13 The court shall also determine whether any other existing
4 14 orders awarding custody or visitation should be modified.

4 15 Sec. 5. Section 236.4, subsection 3, Code 2007, is amended
4 16 to read as follows:

4 17 3. If a hearing is continued, the court may make or extend
4 18 any temporary order under subsection 2 or 2A that it deems
4 19 necessary.

4 20 Sec. 6. Section 236.5, subsection 2, paragraph d, Code
4 21 2007, is amended to read as follows:

4 22 d. The awarding of temporary custody of or establishing
4 23 temporary visitation rights with regard to children under
4 24 eighteen. In awarding temporary custody or temporary
4 25 visitation rights, the court shall give primary consideration
4 26 to the safety of the victim and the children. Prior to the
4 27 entry of any temporary order pursuant to this subsection
4 28 related to a child-custody determination as defined in section

4 29 598B.102, the plaintiff and defendant shall comply with the
4 30 provisions of section 598B.209. If the court finds that the
4 31 safety of the victim or the children will be jeopardized by
4 32 unsupervised or unrestricted visitation, the court shall
4 33 condition or restrict visitation as to time, place, duration,
4 34 or supervision, or deny visitation entirely, as needed to
4 35 guard the safety of the victim and the children. The court
5 1 shall also ~~investigate~~ determine whether any other existing
5 2 orders awarding custody or visitation rights should be
5 3 modified.

5 4 Sec. 7. NEW SECTION. 602.6113 APPORTIONMENT OF CERTAIN
5 5 JUDICIAL OFFICERS == SUBSTANTIAL DISPARITY.
5 6 Notwithstanding section 602.6201, 602.6301, 602.6304,
5 7 602.7103B, or 633.20B, if a vacancy occurs in the office of a
5 8 district judge, district associate judge, associate juvenile
5 9 judge, or associate probate judge, and the chief justice of
5 10 the supreme court makes a finding that a substantial disparity
5 11 exists in the allocation of such judgeships and judicial
5 12 workload between judicial election districts, the chief
5 13 justice may apportion the vacant office from the judicial
5 14 election district where the vacancy occurs to another judicial
5 15 election district based upon the substantial disparity
5 16 finding. However, such a judgeship shall not be apportioned
5 17 pursuant to this section unless a majority of the judicial
5 18 council approves the apportionment. This section does not
5 19 apply to a district associate judge office authorized by
5 20 section 602.6302 or 602.6307.

5 21 Sec. 8. Section 602.6303, subsection 5, Code 2007, is
5 22 amended to read as follows:

5 23 5. If a majority of the district judges in a judicial
5 24 election district determines that a substitution is no longer
5 25 desirable, then all three magistrate positions shall be
5 26 terminated. However, a reversion pursuant to this subsection
5 27 shall not take effect until the terms of the three magistrates
5 28 expire. Upon the termination of the magistrate positions
5 29 created under this section, an appointment shall be made to
5 30 reestablish the term of office for a district associate judge
5 31 as provided in ~~sections~~ section 602.6304 ~~and 602.6305~~.

5 32 Sec. 9. Section 602.6304, Code 2007, is amended by
5 33 striking the section and inserting in lieu thereof the
5 34 following:

5 35 602.6304 APPOINTMENT OF DISTRICT ASSOCIATE JUDGE.

6 1 1. A district associate judge authorized by the formula
6 2 pursuant to section 602.6301 or authorized by section 602.6302
6 3 or 602.6307, shall be nominated, serve an initial term, and
6 4 stand for retention in office as provided in this section and
6 5 as provided in chapter 46.

6 6 2. An applicant for district associate judge shall file a
6 7 certified application form, to be provided by the supreme
6 8 court, with the chairperson of the district judicial
6 9 nominating commission.

6 10 3. A district associate judge shall be a resident of the
6 11 judicial election district in which appointed and retained. A
6 12 district associate judge shall serve in the judicial district
6 13 of the residence of the district associate judge while in
6 14 office, regardless of the number of district associate
6 15 judgeships authorized. A district associate judge is subject
6 16 to reassignment as provided in section 602.6108.

6 17 4. A district associate judge shall qualify for office as
6 18 provided in chapter 63 for a district judge.

6 19 5. For purposes of this section, "vacancy" means the
6 20 death, resignation, retirement, or removal of a district
6 21 associate judge, or the failure of a district associate judge
6 22 to be retained in office at the judicial election, or an
6 23 increase in judgeships allowable by law.

6 24 6. Applicants for the office of district associate judge
6 25 shall apply to the district judicial nominating commission for
6 26 the judicial election district in which the vacancy is
6 27 located. The judicial district nominating commission and the
6 28 nominating process shall be governed by chapter 46 if not
6 29 inconsistent with the provisions of this section.

6 30 7. The district judicial nominating commission shall
6 31 nominate three persons to the district judges of the judicial
6 32 election district. The district judicial nominating
6 33 commission shall certify the nominees in writing to the
6 34 district judge with the longest service in the judicial
6 35 election district in which the appointment is to occur.

7 1 Copies shall be sent to the chief judge of the judicial
7 2 district, the district court administrator of the judicial
7 3 district, and the state court administrator. The longest
7 4 serving district judge of the judicial election district shall

7 5 serve as the chairperson of the district judges for the
7 6 purpose of this section.

7 7 8. Within thirty days of the date the longest serving
7 8 district judge in the judicial election district receives the
7 9 list of nominees from the judicial district nominating
7 10 commission to a vacancy in the office of district associate
7 11 judge, the district judges in the judicial election district
7 12 shall, by majority vote, appoint one of the nominees to fill
7 13 the vacancy. If the appointment is not made within thirty
7 14 days, the chief justice shall make the appointment from the
7 15 list of nominees.

7 16 Sec. 10. Section 602.7103B, Code 2007, is amended by
7 17 striking the section and inserting in lieu thereof the
7 18 following:

7 19 602.7103B APPOINTMENT OF AN ASSOCIATE JUVENILE JUDGE.

7 20 1. An associate juvenile judge shall be nominated, serve
7 21 an initial term, and stand for retention in office as provided
7 22 in this section and as provided in chapter 46.

7 23 2. An applicant for associate juvenile judge shall file a
7 24 certified application form, to be provided by the supreme
7 25 court, with the chairperson of the district judicial
7 26 nominating commission.

7 27 3. An associate juvenile judge shall be a resident of the
7 28 judicial election district in which appointed and retained.
7 29 An associate juvenile judge shall serve in the judicial
7 30 district of the residence of the judge while in office,
7 31 regardless of the number of judgeships authorized. An
7 32 associate juvenile judge is subject to reassignment under
7 33 section 602.6108.

7 34 4. An associate juvenile judge shall qualify for office as
7 35 provided in chapter 63 for a district judge.

8 1 5. For purposes of this section, "vacancy" means the
8 2 death, resignation, retirement, or removal of an associate
8 3 juvenile judge, or the failure of an associate juvenile judge
8 4 to be retained in office at the judicial election, or an
8 5 increase in associate juvenile judgeships allowable by law.

8 6 6. Applicants for the office of associate juvenile judge
8 7 shall apply to the district judicial nominating commission for
8 8 the judicial election district in which the vacancy is
8 9 located. The judicial district nominating commission and the
8 10 nominating process shall be governed by chapter 46 if not
8 11 inconsistent with the provisions of this section.

8 12 7. The district judicial nominating commission shall
8 13 nominate three persons to the district judges of the judicial
8 14 election district. The district judicial nominating
8 15 commission shall certify the nominees in writing to the
8 16 district judge with the longest service in the judicial
8 17 election district in which the appointment is to occur.
8 18 Copies shall be sent to the chief judge of the judicial
8 19 district, the district court administrator of the judicial
8 20 district, and the state court administrator. The longest
8 21 serving district judge of the judicial election district shall
8 22 serve as the chairperson of the district judges for the
8 23 purpose of this section.

8 24 8. Within thirty days of the date the longest serving
8 25 district judge in the judicial election district receives the
8 26 list of nominees from the judicial district nominating
8 27 commission to a vacancy in the office of associate juvenile
8 28 judge, the district judges in the judicial election district
8 29 shall, by majority vote, appoint one of the nominees to fill
8 30 the vacancy. If the appointment is not made within thirty
8 31 days, the chief justice shall make the appointment from the
8 32 list of nominees.

8 33 Sec. 11. Section 602.9202, Code 2007, is amended by adding
8 34 the following new subsection:

8 35 NEW SUBSECTION. 3A. "Senior judge retirement age" means
9 1 seventy-eight years of age or, if the senior judge is
9 2 reappointed as a senior judge for an additional two-year term
9 3 upon attaining seventy-eight years of age pursuant to section
9 4 602.9203, eighty years of age.

9 5 Sec. 12. Section 602.9203, subsection 5, Code 2007, is
9 6 amended to read as follows:

9 7 5. a. A senior judge may be reappointed to additional
9 8 two-year terms, at the discretion of the supreme court, if the
9 9 judicial officer meets the requirements of subsection 2.

9 10 b. A senior judge may be reappointed to an additional
9 11 two-year term upon attaining seventy-eight years of age, at
9 12 the discretion of the supreme court, if the judicial officer
9 13 meets the requirements of subsection 2.

9 14 Sec. 13. Section 602.9204, subsection 1, Code 2007, is
9 15 amended to read as follows:

9 16 1. A judge who retires on or after July 1, 1994, and who
9 17 is appointed a senior judge under section 602.9203 shall be
9 18 paid a salary as determined by the general assembly. A senior
9 19 judge or retired senior judge shall be paid an annuity under
9 20 the judicial retirement system in the manner provided in
9 21 section 602.9109, but computed under this section in lieu of
9 22 section 602.9107, as follows: The annuity paid to a senior
9 23 judge or retired senior judge shall be an amount equal to the
9 24 applicable percentage multiplier of the basic senior judge
9 25 salary, multiplied by the judge's years of service prior to
9 26 retirement as a judge of one or more of the courts included
9 27 under this article, for which contributions were made to the
9 28 system, except the annuity of the senior judge or retired
9 29 senior judge shall not exceed an amount equal to the
9 30 applicable specified percentage of the basic senior judge
9 31 salary used in calculating the annuity. However, ~~following~~
~~9 32 the twelve-month period during which the senior judge or~~
~~9 33 retired when a senior judge attains seventy-eight years of~~
9 34 senior judge retirement age, the annuity paid to the person
9 35 shall be an amount equal to the applicable percentage
10 1 multiplier of the basic senior judge salary cap, multiplied by
10 2 the judge's years of service prior to retirement as a judge of
10 3 one or more of the courts included under this article, for
10 4 which contributions were made to the system, except that the
10 5 annuity shall not exceed an amount equal to the applicable
10 6 specified percentage of the basic senior judge salary cap. A
10 7 senior judge or retired senior judge shall not receive
10 8 benefits calculated using a basic senior judge salary
10 9 established after ~~the twelve-month period in which the senior~~
10 10 ~~judge or retired senior judge attains seventy-eight years of~~
10 11 senior judge retirement age. The state shall provide,
10 12 regardless of age, to an active senior judge or a senior judge
10 13 with six years of service as a senior judge and to the judge's
10 14 spouse, and pay for medical insurance until the judge attains
10 15 ~~the senior judge retirement age of seventy-eight years.~~

10 16 Sec. 14. Section 602.9204, subsection 2, paragraphs d and
10 17 e, Code 2007, are amended to read as follows:
10 18 d. "Basic senior judge salary cap" means the basic senior
10 19 judge salary, ~~at the end of the twelve-month period during~~
~~10 20 which when the senior judge or retired senior judge attained~~
~~10 21 seventy-eight years of attains senior judge retirement~~ age, of
10 22 the office in which the person last served as a judge before
10 23 retirement as a judge or senior judge.

10 24 e. "Escalator" means the difference between the current
10 25 basic salary, as of the time each payment is made up to and
10 26 including ~~the twelve-month period during which when the senior~~
10 27 ~~judge or retired senior judge attains seventy-eight years of~~
10 28 senior judge retirement age, of the office in which the senior
10 29 judge last served as a judge before retirement as a judge or
10 30 senior judge, and the basic annual salary which the judge is
10 31 receiving at the time the judge becomes separated from
10 32 full-time service as a judge of one or more of the courts
10 33 included in this article, as would be used in computing an
10 34 annuity pursuant to section 602.9107 without service as a
10 35 senior judge.

11 1 Sec. 15. Section 602.9207, subsection 1, Code 2007, is
11 2 amended to read as follows:

11 3 1. A senior judge shall cease to be a senior judge upon
11 4 ~~completion of the twelve-month period during which the judge~~
~~11 5 attains seventy-eight years of attaining senior judge~~
11 6 retirement age. The clerk of the supreme court shall make a
11 7 notation of the retirement of a senior judge in the roster of
11 8 senior judges, at which time the senior judge shall become a
11 9 retired senior judge.

11 10 Sec. 16. Section 602.9208, subsection 1, Code 2007, is
11 11 amended to read as follows:

11 12 1. A senior judge, at any time prior to ~~the end of the~~
~~11 13 twelve-month period during which the judge attains attaining~~
11 14 ~~seventy-eight years of senior judge retirement~~ age, may submit
11 15 to the clerk of the supreme court a written request that the
11 16 judge's name be stricken from the roster of senior judges.
11 17 Upon the receipt of the request the clerk shall strike the
11 18 name of the person from the roster of senior judges, at which
11 19 time the person shall cease to be a senior judge. A person
11 20 who relinquishes a senior judgeship as provided in this
11 21 subsection may be assigned to temporary judicial duties as
11 22 provided in section 602.1612.

11 23 Sec. 17. Section 633.20B, Code 2007, is amended by
11 24 striking the section and inserting in lieu thereof the
11 25 following:

11 26 633.20B APPOINTMENT OF AN ASSOCIATE PROBATE JUDGE.

11 27 1. An associate probate judge shall be nominated, serve an
11 28 initial term, and stand for retention in office as provided in
11 29 this section and as provided in chapter 46.
11 30 2. An applicant for associate probate judge shall file a
11 31 certified application form, to be provided by the supreme
11 32 court, with the chairperson of the district judicial
11 33 nominating commission.
11 34 3. An associate probate judge shall be a resident of the
11 35 judicial election district in which appointed and retained.
12 1 An associate probate judge shall serve in the judicial
12 2 district of the residence of the associate probate judge while
12 3 in office, regardless of the number of associate probate
12 4 judgeships authorized. An associate probate judge is subject
12 5 to reassignment under section 602.6108.
12 6 4. An associate probate judge shall qualify for office as
12 7 provided in chapter 63 for a district judge.
12 8 5. For purposes of this section, "vacancy" means the
12 9 death, resignation, retirement, or removal of an associate
12 10 probate judge, or the failure of an associate probate judge to
12 11 be retained in office at the judicial election, or an increase
12 12 in associate probate judgeships allowable by law.
12 13 6. Applicants for the office of associate probate judge
12 14 shall apply to the district judicial nominating commission for
12 15 the judicial election district in which the vacancy is
12 16 located. The judicial district nominating commission and the
12 17 nominating process shall be governed by chapter 46 if not
12 18 inconsistent with the provisions of this section.
12 19 7. The district judicial nominating commission shall
12 20 nominate three persons to the district judges of the judicial
12 21 election district. The district judicial nominating
12 22 commission shall certify the nominees in writing to the
12 23 district judge with the longest service in the judicial
12 24 election district in which the appointment is to occur.
12 25 Copies shall be sent to the chief judge of the judicial
12 26 district, the district court administrator of the judicial
12 27 district, and the state court administrator. The longest
12 28 serving district judge of the judicial election district shall
12 29 serve as the chairperson of the district judges for the
12 30 purpose of this section.
12 31 8. Within thirty days of the date the longest serving
12 32 district judge in the judicial election district receives the
12 33 list of nominees from the judicial district nominating
12 34 commission to a vacancy in the office of associate probate
12 35 judge, the district judges in the judicial election district
13 1 shall, by majority vote, appoint one of the nominees to fill
13 2 the vacancy. If the appointment is not made within thirty
13 3 days, the chief justice shall make the appointment from the
13 4 list of nominees.
13 5 Sec. 18. Sections 602.6305, 602.7103C, and 633.20C, Code
13 6 2007, are repealed.
13 7 SF 2353
13 8 jm/rj/cc/26